

# Annex 1

## Public Redacted

**From:** Trial Chamber VI Communications [REDACTED]  
**Sent:** 31 October 2022 14:49  
**To:** FS Items Communication [REDACTED]  
**Cc:** OTP CAR IIA Communications [REDACTED] D33 Said Defence Team  
 [REDACTED]; Said LRV Team OPCV [REDACTED] Trial  
 Chamber VI Communications [REDACTED] Associate Legal Officer-  
 Court Officer [REDACTED]  
**Subject:** SAID - Decision on Submitted Materials for P-0547

Dear Parties, participants and the Registry,

On 10 October 2022, the Prosecution requested that the Chamber recognise 25 items as formally submitted (Emails from the Prosecution, dated 10 October 2022, at 14:58 and 17:52 respectively).

On the same day, the Defence requested that the Chamber recognise 16 items as formally submitted (Email from the Defence, dated 10 October 2022, at 15:05).

On 13 October 2022, the Prosecution submitted a response to the Email from the Defence (Email Response from the Prosecution, dated 13 October 2022, at 18:00). Therein it objects to items 1, 3-5 and 6 of the Defence's list.

On 14 October 2022, the Defence replied to the Prosecution Response (Email Reply from the Defence, dated 14 October 2022, at 13:47).

#### Items Requested by the Prosecution

As a preliminary matter, the Chamber observes that the Prosecution's table contains an error. In relation to item 19 (CAR-OTP-2033-7554), the Chamber notes that the Prosecution lists CAR-REG-0002-0001 as the annotated version of item 19. However, upon review of CAR-REG-0002-0001, the Chamber notes that this is actually the annotated version of item 22.

With regard to the items submitted by the Prosecution, the Chamber notes that all items were discussed in one form or another during the witness's testimony. Similarly, the Chamber observes that the Defence does not oppose any of the items requested by the Prosecution to be submitted. Accordingly, the Chamber recognises all items in the Prosecution's email dated 10 October 2022 at 17:52 as formally submitted.

Furthermore, the Chamber notes that, in respect of item 17 (CAR-OTP-2033-6907), the Prosecution has not sought formal submission of the annotated version of this item (CAR-REG-0002-0011). The Chamber finds that the Prosecution's approach is inconsistent in this regard, requesting recognition of the annotated versions for some items but not all. Pursuant to its powers under article 69(3) of the Statute, the Chamber finds that, for completeness of the record, this annotated version should also be recognised as formally submitted.

#### Items Requested by the Defence

First, the Chamber observes that a number of items submitted by the Defence have also sought to be submitted by the Prosecution. Specifically, items 2, 11, 12 and 13 on the Defence's list. The Chamber notes that once an item has been recognised as formally submitted, it will not rule on this item again.

Second, the Chamber observes that the Prosecution does not object to items 2, 7-16 on the Defence's List. The Chamber notes that all of these items were discussed in one form or another during the witness's testimony. Accordingly, the Chamber recognises items 7-10, 14-16 on the Defence's List (as noted above, items 2, 11, 12 and 13 appear on the Prosecution's List and have already been deemed formally submitted).

The Chamber will now turn to the items sought by the Defence for formal submission which are objected to by the Prosecution.

*Items 1, 3-5 on the Defence's List*

The Prosecution objects to items 1, 3-5 (CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02) on the basis that they are the witness's 'statements and their translations, the introduction of which is only allowed when the conditions for the introduction of the prior recorded testimony specifically provided for in the Court's applicable law are met'. In this regard, the Prosecution avers that should the Defence wish to introduce these items it 'must do so through a formal submission under rule 68 of the Rules of Procedure and Evidence setting out specifically how each legal requirement is satisfied for these items. In so far as these documents were used by the Defence to impeach Witness P-0547's testimony, it is sufficient and appropriate by looking at the relevant transcripts of P-0547's testimony rather than his statements, as these transcripts record how and which specific parts of the statements were cited and referred to by the Defence to Witness P-0547'.

In response, the Defence submits that: (i) contrary to the Prosecution's submissions, it does not seek the entirety of all of P-0547's statements, but rather only to the specific paragraphs referred to during his cross examination by the Defence; (ii) the Defence seeks the formal submission of both the French and English versions of the relevant parts of the statements to ensure that all official translations are available on the case record; and (iii) it is necessary for completeness of the case record that where a party uses a prior statement with a witness to either confront him or refresh his memory that those paragraphs used are submitted on the case record.

The Chamber finds that the items submitted by the Defence constitute prior recorded testimony within the meaning of rule 68 of the Rules of Procedure and Evidence (the 'Rules'). Accordingly, in accordance with the jurisprudence from the Court (*see, for example, ICC-01/05-01/13-2275-Red, para. 581*), in order to be deemed formally submitted the requesting party must ensure that the requirements of one of the sub-rules of rule 68 of the Rules are satisfied. In this regard, although the witness did provide oral comment on the paragraphs put to him by the Defence, the requirements of rule 68, in particular rule 68(3), have not been satisfied. Accordingly, the Chamber rejects the Defence's request to have CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02 recognised as formally submitted.

That notwithstanding, as noted by the Prosecution, when these documents were used with the witness the relevant portions were referred to and read into the record – as required by paragraphs 19 and 21 of the Additional Directions on the Conduct of Proceedings (#479). In this respect, the Chamber notes that the transcripts of P-0547's testimony in court contain the relevant information sought to be introduced by the Defence. Therefore, the Chamber notes that the relevant sections are already on the record, which the Chamber will have regard to in its assessment of the evidence for the purposes of its judgment pursuant to article 74 of the Statute. To the extent that other portions of a witness' statement may need to be consulted in order to have a full understanding of

the passage that was read into the record, the Chamber considers that it is not necessary to formally submit the entire statement for this purpose.

In future, the Chamber instructs the parties to not seek submission of items constituting prior recorded testimony through the formal submission of evidence procedure.

#### *Item 6 on the Defence's List*

The Prosecution objects to the 'wholesale submission of the Facebook conversation at CAR-OTP-2101-7868', which is item 6 on the Defence's list. The Prosecution submits that it 'would not oppose the submission of those pages containing messages on which Witness P-0547 specifically gave evidence during oral testimony' but objects to the submission 'of the messages upon which Witness P-0547 was not given an opportunity comment', averring that the Defence has not established the 'prima facie relevance and reliability' of those messages.

The Defence, in response, submits that the messages have sufficient indicia of reliability as they are the result of a cooperation request by the Prosecution and the witness confirmed in court that they were messages he exchanged. Furthermore, the Defence submits that the document consists of an unbroken chain of messages between two people and it would have been inefficient for the Defence to discuss each message with the witness. Furthermore, the Defence submits that the messages are relevant to P-0547's credibility and the role and function of the Anti-Balaka during the charged period.

The Chamber rejects the Prosecution's submissions. Indeed the Chamber notes that the Prosecution seeks submission of an item (CAR-OTP-2118-3740) which the witness did not comment on in its entirety (only one specific page). Furthermore, the Chamber finds, pursuant to its powers under article 69(3) of the Statute, that the entirety of a document put to a witness shall be deemed formally submitted not merely the sections commented on by the witness during his or testimony. In any event, the Chamber notes that the Registry indicates in the eCourt metadata which specific pages were used in court.

Accordingly, the Chamber recognises item 6 of the Defence's List (CAR-OTP-2101-7868) as formally submitted.

#### Conclusion

In short, the Chamber recognises all items requested by the Prosecution and all items requested by the Defence, with the exception of Items 1, 3-5 (CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02) on the Defence's List, as formally submitted.

In addition, the Chamber also recognises the annotated version of item 17 on the Prosecution's list of requested items (namely, CAR-REG-0002-0011) as formally submitted.

As a final administrative matter, the Chamber instructs the Defence that when sending its list of items it wishes to have recognised as formally submitted, that the relevant ERN numbers are hyperlinked to Nuix.

Kind regards,  
Trial Chamber VI

**From:** Bittaye, Ramu Fatima  
**Sent:** 10 October 2022 17:52  
**To:** Trial Chamber VI Communications  
**Cc:** OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV; Associate Legal Officer-Court Officer  
**Subject:** RE: 221010 - Request for formal submission of evidence used in the Prosecution's examination of P-0547

Dear all,

The Prosecution had listed item 24 together with item 25 in error. The list is corrected and provided herewith.

| Tab | ERN<br>(E-Court)                  | Registration<br>number of the<br>version marked<br>by the witness | Description                                  | Confidentiality |
|-----|-----------------------------------|-------------------------------------------------------------------|----------------------------------------------|-----------------|
| 1.  | CAR-<br>OTP-<br>2018-<br>0420-R01 |                                                                   | Annex 1 : Certificat Medical                 | Confidential    |
| 2.  | CAR-<br>OTP-<br>2018-0421         |                                                                   | Annex 2 : Dossier sanitaire                  | Confidential    |
| 3.  | CAR-<br>OTP-<br>2018-0586         | CAR-REG-0002-<br>0002                                             | Annex 5: Photo 02: [REDACTED]<br>[REDACTED]  | Confidential    |
| 4.  | CAR-<br>OTP-<br>2018-0590         | CAR-REG-0002-<br>0006                                             | Annex 5 / Photo 04: [REDACTED]<br>[REDACTED] | Confidential    |
| 5.  | CAR-<br>OTP-<br>2018-0592         | CAR-REG-0002-<br>0005                                             | Annex 5 / Photo 05: [REDACTED]<br>[REDACTED] | Confidential    |
| 6.  | CAR-<br>OTP-<br>2018-0594         | CAR-REG-0002-<br>0004                                             | Annex 5 / Photo 06: [REDACTED]<br>[REDACTED] | Confidential    |
| 7.  | CAR-<br>OTP-<br>2018-0598         | CAR-REG-0002-<br>0003                                             | Annex 5 / Photo 08: [REDACTED]<br>[REDACTED] | Confidential    |
| 8.  | CAR-<br>OTP-<br>2018-0600         | CAR-REG-0002-<br>0007                                             | Annex 5 / Photo 09: [REDACTED]<br>[REDACTED] | Confidential    |

|     |                           |                   |                                                                                                        |              |
|-----|---------------------------|-------------------|--------------------------------------------------------------------------------------------------------|--------------|
| 9.  | CAR-<br>OTP-<br>2018-0430 |                   | Annex 6: Photo shown to P-0547 during interview                                                        | Confidential |
| 10. | CAR-<br>OTP-<br>2018-0431 |                   | Annex 6: Photo shown to P-0547 during interview                                                        | Confidential |
| 11. | CAR-<br>OTP-<br>2018-0440 |                   | Annex 6: Photo shown to P-0547 during interview                                                        | Confidential |
| 12. | CAR-<br>OTP-<br>2018-0443 |                   | Annex 6: Photo shown to P-0547 during interview                                                        | Confidential |
| 13. | CAR-<br>OTP-<br>2018-0445 |                   | Annex 6: Photo shown to P-0547 during interview                                                        | Confidential |
| 14. | CAR-<br>OTP-<br>2111-0086 |                   | Dossier sanitaire de [REDACTED]<br>[REDACTED]<br>[REDACTED]<br>[REDACTED]                              | Confidential |
| 15. | CAR-<br>OTP-<br>2033-7060 | CAR-REG-0002-0009 | IMG_4689.JPG<br>Photo - Underground cell - view of the office with a plank covering the entrance       | Confidential |
| 16. | CAR-<br>OTP-<br>2033-6871 | CAR-REG-0002-0008 | IMG_4520.JPG<br>Photo of the cells (G1 to G4)                                                          | Confidential |
| 17. | CAR-<br>OTP-<br>2033-6907 |                   | IMG_4553.JPG<br>Photo of the inside of G3 cell                                                         | Confidential |
| 18. | CAR-<br>OTP-<br>2033-7044 | CAR-REG-0002-0013 | IMG_4675_stitch.jpg<br>Photo - Office in the OCRB main building.                                       | Confidential |
| 19. | CAR-<br>OTP-<br>2033-7554 | CAR-REG-0002-0001 | IMG_5154.JPG<br>Photo - View of the underground cell entrance                                          | Confidential |
| 20. | CAR-<br>OTP-<br>2033-7056 | CAR-REG-0002-0010 | IMG_4685_stitch.jpg<br>Photo of an office in the OCRB main building with visible planks on the ground. | Confidential |

|     |                           |                   |                                                                                                                                                                                                |              |
|-----|---------------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 21. | CAR-<br>OTP-<br>2118-3740 | CAR-REG-0002-0012 | Expert Report – Examination of the Crime Scene of the Building of the <i>Office Central de Répression du Banditisme</i> (OCRB) and Immediate vicinity in Bangui, Central African Republic (EN) | Confidential |
| 22. | CAR-<br>OTP-<br>2033-6860 |                   | IMG_4509.JPG                                                                                                                                                                                   | Confidential |
| 23. | CAR-<br>OTP-<br>2033-7305 |                   | IMG_4903_stitch.jpg                                                                                                                                                                            | Confidential |
| 24. | CAR-<br>OTP-<br>2018-0423 |                   | Annex 3 : Societe Moov.Telecom Sketch                                                                                                                                                          | Confidential |
| 25. | CAR-<br>REG-<br>0002-0016 |                   | Photograph provided P-0547 during his testimony                                                                                                                                                | Confidential |

Kind regards,

Ramu

**From:** Bittaye, Ramu Fatima

**Sent:** 10 October 2022 14:58

**To:** Trial Chamber VI Communications [REDACTED]

**Cc:** OTP CAR IIA Communications [REDACTED] D33 Said Defence Team

[REDACTED] Said LRV Team OPCV [REDACTED] Associate Legal Officer-Court Officer [REDACTED]

**Subject:** HPRM: 221010 - Request for formal submission of evidence used in the Prosecution's examination of P-0547

Dear Trial Chamber VI,

In line with the procedure outlined in paragraph 22 of the Directions on the Conduct of Proceedings (ICC-01/14-01/21-251), the Prosecution requests the formal submission of evidence used in its examination of Witness P-0547 listed in this email.

| Tab | ERN<br>(E-Court)                  | Registration<br>number of the<br>version marked<br>by the witness | Description                  | Confidentiality |
|-----|-----------------------------------|-------------------------------------------------------------------|------------------------------|-----------------|
| 1.  | CAR-<br>OTP-<br>2018-<br>0420-R01 |                                                                   | Annex 1 : Certificat Medical | Confidential    |

|     |                           |                       |                                                    |              |
|-----|---------------------------|-----------------------|----------------------------------------------------|--------------|
| 2.  | CAR-<br>OTP-<br>2018-0421 |                       | Annex 2 : Dossier sanitaire                        | Confidential |
| 3.  | CAR-<br>OTP-<br>2018-0586 | CAR-REG-0002-<br>0002 | Annex 5: Photo 02: [REDACTED]<br>[REDACTED]        | Confidential |
| 4.  | CAR-<br>OTP-<br>2018-0590 | CAR-REG-0002-<br>0006 | Annex 5 / Photo 04: [REDACTED]<br>[REDACTED]       | Confidential |
| 5.  | CAR-<br>OTP-<br>2018-0592 | CAR-REG-0002-<br>0005 | Annex 5 / Photo 05: [REDACTED]<br>[REDACTED]       | Confidential |
| 6.  | CAR-<br>OTP-<br>2018-0594 | CAR-REG-0002-<br>0004 | Annex 5 / Photo 06: [REDACTED]<br>[REDACTED]       | Confidential |
| 7.  | CAR-<br>OTP-<br>2018-0598 | CAR-REG-0002-<br>0003 | Annex 5 / Photo 08: [REDACTED]<br>[REDACTED]       | Confidential |
| 8.  | CAR-<br>OTP-<br>2018-0600 | CAR-REG-0002-<br>0007 | Annex 5 / Photo 09: [REDACTED]<br>[REDACTED]       | Confidential |
| 9.  | CAR-<br>OTP-<br>2018-0430 |                       | Annex 6: Photo shown to P-0547<br>during interview | Confidential |
| 10. | CAR-<br>OTP-<br>2018-0431 |                       | Annex 6: Photo shown to P-0547<br>during interview | Confidential |
| 11. | CAR-<br>OTP-<br>2018-0440 |                       | Annex 6: Photo shown to P-0547<br>during interview | Confidential |
| 12. | CAR-<br>OTP-<br>2018-0443 |                       | Annex 6: Photo shown to P-0547<br>during interview | Confidential |
| 13. | CAR-<br>OTP-<br>2018-0445 |                       | Annex 6: Photo shown to P-0547<br>during interview | Confidential |



|     |                           |                       |                                                                                                                                                                                                                |              |
|-----|---------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 14. | CAR-<br>OTP-<br>2111-0086 |                       | Dossier sanitaire de [REDACTED]<br>[REDACTED]<br>[REDACTED]                                                                                                                                                    | Confidential |
| 15. | CAR-<br>OTP-<br>2033-7060 | CAR-REG-0002-<br>0009 | IMG_4689.JPG<br>Photo - Underground cell - view<br>of the office with a plank<br>covering the entrance                                                                                                         | Confidential |
| 16. | CAR-<br>OTP-<br>2033-6871 | CAR-REG-0002-<br>0008 | IMG_4520.JPG<br>Photo of the cells (G1 to G4)                                                                                                                                                                  | Confidential |
| 17. | CAR-<br>OTP-<br>2033-6907 |                       | IMG_4553.JPG<br>Photo of the inside of G3 cell                                                                                                                                                                 | Confidential |
| 18. | CAR-<br>OTP-<br>2033-7044 | CAR-REG-0002-<br>0013 | IMG_4675_stitch.jpg<br>Photo - Office in the OCRB main<br>building.                                                                                                                                            | Confidential |
| 19. | CAR-<br>OTP-<br>2033-7554 | CAR-REG-0002-<br>0001 | IMG_5154.JPG<br>Photo - View of the underground<br>cell entrance                                                                                                                                               | Confidential |
| 20. | CAR-<br>OTP-<br>2033-7056 | CAR-REG-0002-<br>0010 | IMG_4685_stitch.jpg<br>Photo of an office in the OCRB<br>main building with visible planks<br>on the ground.                                                                                                   | Confidential |
| 21. | CAR-<br>OTP-<br>2118-3740 | CAR-REG-0002-<br>0012 | Expert Report – Examination of<br>the Crime Scene of the Building<br>of the <i>Office Central de Répression<br/>du Banditisme</i> (OCRB) and<br>Immediate vicinity in Bangui,<br>Central African Republic (EN) | Confidential |
| 22. | CAR-<br>OTP-<br>2033-6860 |                       | IMG_4509.JPG                                                                                                                                                                                                   | Confidential |
| 23. | CAR-<br>OTP-<br>2033-7305 |                       | IMG_4903_stitch.jpg                                                                                                                                                                                            | Confidential |
| 24. | CAR-<br>OTP-<br>2018-0423 | CAR-REG-0002-<br>0016 | Annex 3 : Societe Moov.Telecom<br>Sketch                                                                                                                                                                       | Confidential |

Best regards,

Ramu Fatima Bittaye

**From:** Bittaye, Ramu Fatima  
**Sent:** 13 October 2022 18:00  
**To:** Trial Chamber VI Communications  
**Cc:** OTP CAR IIA Communications; Said LRV Team OPCV; Associate Legal Officer-Court Officer; D33 Said Defence Team  
**Subject:** RE: Mise en oeuvre du paragraphe 22 de la décision ICC-01/14-01/21-251/ P-0547

Dear Trial Chamber VI,

The Prosecution objects to the Defence's submission of CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02 (items Nos. 1, 3-5 of the Defence's list). These documents are Witness P-0547's statements and their translations, the introduction of which is only allowed when the conditions for the introduction of the prior recorded testimony specifically provided for in the Court's applicable law are met (see ICC-01/14-01/18-1197-Anx1, page. 3; ICC-01/14-01/18-631, para. 56; ICC-02/04-01/15-1670, paras. 8-13). The Prosecution submits that should the Defence wish these items to be introduced into evidence, the Defence must do so through a formal submission under rule 68 of the Rules of Procedure and Evidence setting out specifically how each legal requirement is satisfied for these items. In so far as these documents were used by the Defence to impeach Witness P-0547's testimony, it is sufficient and appropriate by looking at the relevant transcripts of P-0547's testimony rather than his statements, as these transcripts record how and which specific parts of the statements were cited and referred to by the Defence to Witness P-0547.

The Prosecution further opposes the Defence's wholesale submission of the Facebook conversation at CAR-OTP-2101-7868 (item 6 of the Defence's list). The Prosecution would not oppose the submission of those pages containing messages on which Witness P-0547 specifically gave evidence during oral testimony. However, the prima facie relevance and reliability of the messages upon which Witness P-0547 was not given an opportunity to comment have not been established by the Defence.

Kind regards,

Ramu Fatima Bittaye

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**From:** Allix, Léa [REDACTED]  
**Sent:** 10 October 2022 15:05  
**To:** Trial Chamber VI Communications [REDACTED]  
**Cc:** OTP CAR IIA Communication [REDACTED] Said LRV Team OPCV [REDACTED]  
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]  
**Subject:** HPRM: Mise en oeuvre du paragraphe 22 de la décision ICC-01/14-01/21-251/ P-0547

Chère Chambre de première instance VI,

En application du paragraphe 22 de la décision ICC-01/14-01/21-251 sur la conduite des débats, la Défense de Monsieur Said demande respectueusement à ce que soient formellement versés au dossier de l'affaire les éléments soumis par le truchement du témoin P-0547 en audience tels qu'indiqués dans la liste en pièce jointe.

Bien à vous,

Léa Allix

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**From:** Jacobs, Dov [REDACTED]  
**Sent:** 14 October 2022 13:47  
**To:** Trial Chamber VI Communications  
**Cc:** OTP CAR IIA Communications; Said LRV Team OPCV; Bittaye, Ramu Fatima; Associate Legal Officer-Court Officer; D33 Said Defence Team  
**Subject:** RE: Mise en oeuvre du paragraphe 22 de la décision ICC-01/14-01/21-251/ P-0547

Chère Chambre de première instance VI,

En application du paragraphe 22(ii) de la décision sur la conduite des débats du 9 mars 2022 (ICC-01/14-01/21-251), la Défense soumet la réponse suivante aux observations formulées par email par l'Accusation dans son email du 13 octobre 2022.

1) Concernant la demande de la Défense visant à ce que soient formellement soumis au dossier de l'affaire les paragraphes de la déclaration antérieure de P-0547 qui ont été utilisés en audience lors de l'audition du témoin :

La Défense rappelle qu'elle n'a pas demandé la soumission de l'intégralité des déclarations antérieures de P-0547.

Plus précisément, s'agissant des versions françaises des déclarations antérieures du témoin (CAR-OTP-2018-0389-R03 et CAR-OTP-2025-0566-R02), la Défense limite sa demande de soumission formelle aux paragraphes discutés avec le témoin au cours du contre-interrogatoire. Ainsi, s'agissant de la première déclaration antérieure de P-0547 (CAR-OTP-2018-0389-R03), la demande de soumission formelle de la Défense se limite aux paragraphes 19, 27, 120-121 156 et 199. De même, s'agissant de la seconde déclaration antérieure de P-0547 (CAR-OTP-2025-0566-R02), la demande de la Défense se limite aux paragraphes 5 et 49.

Par ailleurs, la Défense a aussi demandé la soumission formelle, pour les mêmes paragraphes, des versions anglaises des deux déclarations antérieures de P-0547 (CAR-OTP-2025-0566-R02 et CAR-OTP-2084-0036-R02), par souci d'exhaustivité, pour assurer que la traduction officielle des déclarations antérieures soit disponible au dossier de l'affaire.

Pour la Défense, à partir du moment où une Partie peut se servir de la déclaration antérieure d'un témoin *viva voce* pour le confronter ou lui rafraîchir la mémoire conformément au paragraphe 19 de la seconde décision sur la conduite des débats du 16 septembre 2022 (ICC-01/15-01/21-479), il est logique, pour la complétude du dossier, que les paragraphes utilisés en audience soient soumis au dossier.

A cet égard, la Défense relève que les jurisprudences invoquées par l'Accusation au soutien de son objection ne sont pas pertinentes pour la présente discussion.

Par exemple, la décision 1670 dans l'affaire *Ongwen* ne semble avoir aucune pertinence pour la présente discussion. En effet, dans l'affaire *Ongwen*, la Défense avait demandé la soumission par *Bar Table* de documents contenant des déclarations faites par certaines personnes devant la « Uganda Human Rights Commission ». La question s'était posée de savoir si ces documents pouvaient constituer des déclarations antérieures au sens de la Règle 68(3) qui ne pouvaient pas être soumises par *Bar Table*. Ici, la question n'est pas celle de la soumission de portions de la déclaration antérieure de P-0547 par *Bar Table*, mais de soumettre au dossier les paragraphes qui ont été utilisés lors du contre-interrogatoire de ce témoin, et donc qui font partie intégrante de son témoignage en audience.

Dans le même sens, la décision 631 dans l'affaire *Yekatom* ne semble pas particulièrement pertinente, puisque là encore, il ne s'agissait pas de discuter de la soumission au dossier de portions de déclarations antérieures utilisées avec un témoin en audience lors d'un contre-interrogatoire. Cette décision renvoie à un jugement de la Chambre d'appel dans l'affaire *Bemba et al.* dans laquelle il est indiqué que :

« Les éléments de preuve à caractère testimonial sont donc inadmissibles – indépendamment de « l'objectif » poursuivi par la partie qui souhaite s'appuyer sur ces éléments – lorsqu'ils ne sont pas obtenus oralement ou lorsque les conditions requises pour la présentation de témoignages préalablement enregistrés spécialement prévues dans le droit applicable à la Cour ne sont pas remplies » (ICC-01/05-01/13-2275-Red-tFRA, par. 581).

Ici, la Défense a bien obtenu « oralement » avec P-0547 des commentaires sur les paragraphes de sa déclaration antérieure qui lui ont été présentés.

La situation est la même concernant la décision « Decision on submitted materials for P-0801 » (ICC-01/14-01/18-1197-Anx1) dans *Yekatom et Ngaissona* qui renvoie en retour à la même décision 631.

Dans ces conditions, la Défense estime qu'il n'y a pas d'obstacle à ce que les paragraphes d'une déclaration antérieure présentés à un témoin en audience sur lequel il a eu l'opportunité de s'exprimer soient soumis au dossier de l'affaire, afin que le dossier contienne le témoignage complet du témoin assurant ainsi la complétude et l'exactitude du dossier. La Défense comprend qu'il s'agit d'une pratique adoptée dans d'autres affaires, comme par exemple l'affaire *Abd Al Rahman*.

2) Concernant la demande de la Défense visant à ce que soit formellement soumis au dossier le document CAR-OTP-2101-7868, qui sont les échanges facebook entre P-0547 et [REDACTED] discutés avec P-0547 lors du contre-interrogatoire:

Concernant la fiabilité de ce document, la Défense rappelle que ce document est un document produit par l'Accusation, suite à une demande de coopération formulée par l'Accusation (RFA OTP/CAR2/FRA-3/ID-cd-pt) auprès des autorités irlandaises. Par ailleurs, le témoin a confirmé en audience qu'il s'agissait bien de messages échangés entre [REDACTED] et lui-même (par exemple, ICC-01/14-01/21-T-024-FRA RT, p.89, l. 6-7, ICC-01/14-01/15-T-021-FRA RT, p.8, l. 5-7).

Par ailleurs, le document est constitué d'une chaîne ininterrompue de messages entre les deux personnes. Dans ces conditions, exiger que la Défense discute chaque message avec le témoin aurait conduit à une utilisation inefficace du temps d'audience, puisqu'alors, la Défense aurait dû consacrer beaucoup plus de temps avec le témoin que ce qu'elle a fait. Prenant en compte des considérations ayant trait à la célérité de la procédure, présenter au témoin l'intégralité des messages contenus dans ce document, soit 209 messages, aurait conduit à une séquence du contre-interrogatoire particulièrement répétitive et chronophage.

Si une telle interprétation de la soumission d'éléments de preuve présentés en audience serait retenue, alors la Défense de manière générale devra passer plus de temps sur des documents qu'elle souhaite soumettre par le truchement d'un témoin.

Par conséquent, la Défense estime qu'elle a suffisamment établi avec le témoin la fiabilité de l'élément de preuve qui a confirmé l'authenticité des échanges avec [REDACTED]. La Défense note que l'Accusation, en contestant la fiabilité de l'élément de preuve, conteste en réalité la méthodologie d'enquête des membres de son propre bureau.

Deuxièmement, concernant la pertinence de ce document, la Défense estime que les rapports de P-0547 avec [REDACTED] touchent de manière évidente à la crédibilité du témoin, notamment ses motivations. Par ailleurs, la question du rôle et du fonctionnement des anti-Balaka fait partie des charges dans la mesure où l'Accusation allègue un conflit armé non-international en 2013.

Bien à vous,

Dov Jacobs

---

**From:** Bittaye, Ramu Fatima [REDACTED]

**Sent:** 13 October 2022 18:00

**To:** Trial Chamber VI Communications [REDACTED]  
**Cc:** OTP CAR IIA Communications [REDACTED] Said LRV Team OPCV [REDACTED]  
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED] D33 Said  
 Defence Team [REDACTED]  
**Subject:** RE: Mise en oeuvre du paragraphe 22 de la décision ICC-01/14-01/21-251/ P-0547

Dear Trial Chamber VI,

The Prosecution objects to the Defence's submission of CAR-OTP-2018-0389-R03, CAR-OTP-2025-0566-R02, CAR-OTP-2078-0292-R02 and CAR-OTP-2084-0036-R02 (items Nos. 1, 3-5 of the Defence's list). These documents are Witness P-0547's statements and their translations, the introduction of which is only allowed when the conditions for the introduction of the prior recorded testimony specifically provided for in the Court's applicable law are met (see ICC-01/14-01/18-1197-Anx1, page. 3; ICC-01/14-01/18-631, para. 56; ICC-02/04-01/15-1670, paras. 8-13). The Prosecution submits that should the Defence wish these items to be introduced into evidence, the Defence must do so through a formal submission under rule 68 of the Rules of Procedure and Evidence setting out specifically how each legal requirement is satisfied for these items. In so far as these documents were used by the Defence to impeach Witness P-0547's testimony, it is sufficient and appropriate by looking at the relevant transcripts of P-0547's testimony rather than his statements, as these transcripts record how and which specific parts of the statements were cited and referred to by the Defence to Witness P-0547.

The Prosecution further opposes the Defence's wholesale submission of the Facebook conversation at CAR-OTP-2101-7868 (item 6 of the Defence's list). The Prosecution would not oppose the submission of those pages containing messages on which Witness P-0547 specifically gave evidence during oral testimony. However, the prima facie relevance and reliability of the messages upon which Witness P-0547 was not given an opportunity to comment have not been established by the Defence.

Kind regards,

Ramu Fatima Bittaye

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**From:** Allix, Léa [REDACTED]  
**Sent:** 10 October 2022 15:05  
**To:** Trial Chamber VI Communications [REDACTED]  
**Cc:** OTP CAR IIA Communications [REDACTED] Said LRV Team OPCV [REDACTED]  
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]  
**Subject:** HPRM: Mise en oeuvre du paragraphe 22 de la décision ICC-01/14-01/21-251/ P-0547

Chère Chambre de première instance VI,

En application du paragraphe 22 de la décision ICC-01/14-01/21-251 sur la conduite des débats, la Défense de Monsieur Said demande respectueusement à ce que soient formellement versés au dossier de l'affaire les éléments soumis par le truchement du témoin P-0547 en audience tels qu'indiqués dans la liste en pièce jointe.

Bien à vous,

Léa Allix

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**Affaire ICC-01/14-01/21****Le Procureur c. Monsieur Said Abdel Kani**

Liste des éléments soumis par le truchement du témoin P-0547 dans le cadre de son témoignage en audience et pour lesquels la Défense demande la soumission formelle au dossier de l'affaire en application du paragraphe 22 de la décision ICC-01/14-01/21-251.

| N° | Doc ID                | Titre                                                               | Demande la soumission de:                                                                                                              |
|----|-----------------------|---------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| 1. | CAR-OTP-2018-0389-R03 | DECLARATION DE TEMOIN                                               | Page ERN 0392, par.19<br>Page ERN 0393, par.27<br>Page ERN 0406, par.120-121<br>Page ERN 0410, par.156<br>Page ERN 0415-0416, par. 199 |
| 2. | CAR-OTP-2018-0423     | Annex 3 / SOCIETE MOOV.TELECOM                                      | Tout le document                                                                                                                       |
| 3. | CAR-OTP-2025-0566-R02 | Translation of Evidence / WITNESS STATEMENT / DÉCLARATION DE TÉMOIN | Par. 19, 27, 120-121, 156, 199                                                                                                         |
| 4. | CAR-OTP-2078-0292-R02 | DÉCLARATION DE TÉMOIN                                               | Page ERN 0294, par. 5<br>Page ERN 0302, par. 49                                                                                        |
| 5. | CAR-OTP-2084-0036-R02 | Translation of Evidence / WITNESS STATEMENT / DÉCLARATION DE TÉMOIN | Page ERN 0039, par. 5<br>Page ERN 0047, par. 49                                                                                        |

| N°  | Doc ID                | Titre                                                                                      | Demande la soumission de: |
|-----|-----------------------|--------------------------------------------------------------------------------------------|---------------------------|
| 6.  | CAR-OTP-2101-7868     | Facebook Messenger Messages [REDACTED]<br>[REDACTED]                                       | Tout le document          |
| 7.  | CAR-OTP-2130-7845-R01 | INVESTIGATION REPORT / Additional information on [REDACTED]<br>[REDACTED] - CAR-OTP-P-0547 | Tout le document          |
| 8.  | CAR-OTP-2135-3862-R01 | Formulaire de demande à titre individuel                                                   | Tout le document          |
| 9.  | CAR-REG-0002-0014     |                                                                                            | Tout le document          |
| 10. | CAR-REG-0002-0015     |                                                                                            | Tout le document          |
| 11. | CAR-REG-0002-0013     |                                                                                            | Tout le document          |
| 12. | CAR-REG-0002-0009     |                                                                                            | Tout le document          |
| 13. | CAR-REG-0002-0010     |                                                                                            | Tout le document          |
| 14. | CAR-REG-0002-0017     |                                                                                            | Tout le document          |

| N°  | Doc ID            | Titre | Demande la soumission de: |
|-----|-------------------|-------|---------------------------|
| 15. | CAR-REG-0002-0018 |       | Tout le document          |
| 16. | CAR-REG-0002-0019 |       | Tout le document          |